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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/645,550	08/22/2003	Kevin Wade Jameson	25357-030-015	9133
36614 7590 12/24/2008 MANATT PHELPS AND PHILLIPS ROBERT D. BECKER 1001 PAGE MILL ROAD, BUILDING 2 PALO ALTO, CA 94304				
EXAMINER				
RADTKE, MARK A				
ART UNIT		PAPER NUMBER		
2165				
MAIL DATE		DELIVERY MODE		
12/24/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/645,550

**Applicant(s)**

JAMESON, KEVIN WADE

**Examiner**

MARK A. X RADTKE

**Art Unit**

2165

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 13 October 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 22-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 22-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SE/US)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 13 October 2008 has been entered.

***Remarks***

2. In response to communications filed on 13 October 2008, claims 22-42 are presently pending in the application, of which, claim(s) 22, 29 and 36 is/are presented in independent form.
3. The Terminal Disclaimer filed 15 February 2008 has been approved. Accordingly, the double patenting rejection is withdrawn. Recent court decisions have required the addition of new grounds of rejection under 35 USC 101.

***Claim Rejections - 35 USC § 101***

4. 35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

5. Claims 22-28 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claims are directed towards a process. Process claims must satisfy the "machine or transformation" test. *In re Bilski*, 545 F.3d 943, 961-62 (Fed. Cir. 2008). Since the claimed inventions recite no hardware, they cannot be tied to a particular machine nor can they transform an article. The claims are nothing more than a collection of abstract steps that may be performed by the human mind and do not necessarily transform any tangible article.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 22-42 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sundararajan (U.S. Patent 6,487,577).

As to claim 22, Sundararajan teaches method for performing a symbolic task operation on a collection, (see Abstract), comprising:

receiving a request from a request originator to perform a collection processing operation on a collection reference expression (see figure 6a and see column 7, lines 58-60, where "request originator" is read on "client" and where "collection processing operation" is read on "job");

performing the collection processing operation on the collection (see column 7, lines 15-17, where "performs" is read on "executes"); and

returning results of the collection processing operation to the request originator (see column 7, lines 60-62)

wherein the request includes a collection reference expression, wherein the collection reference expression includes a sequence of characters that refers to the collection (see column 3, lines 51-62, "job type identification"), and wherein the collection includes collection specifier information and collection content information (see column 4, lines 22-28, "job-shop").

Sundararajan does not explicitly teach wherein the request includes a symbolic task name.

However, these differences are only found in the nonfunctional descriptive material and are not functionally involved in the steps recited. In the context of the claimed invention, the collection processing operation would be performed the same regardless of the data structure sent in the request. Thus, this descriptive material will not distinguish the claimed invention from the prior art in terms of patentability, (see *In*

*re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 404 (Fed. Cir. 1983); *In re Lowry*, 32 F.3d 1579, 32 USPQ2d 1031 (Fed. Cir. 1994)).

Therefore, it would have been obvious to a person of ordinary skill in the relevant art at the time the invention was made to perform the collection processing operation based on any request parameters, because such data does not functionally relate to the steps in the method claimed and because the subjective interpretation of data does not patentably distinguish the claimed invention.

As to claims 23, 30 and 37, Sundararajan, as modified, teaches wherein wherein performing the collection processing operation includes expanding the collection reference into a list of particular individual collections (See column 3, lines 51-61. Specifically, the database look-up portion of the citation discloses an ID number which can be used to "provide the SC computer with information on [...] the job". See also column 4, lines 14-28.).

As to claims 24, 31 and 38, Sundararajan, as modified, teaches wherein wherein performing the collection processing operation includes expanding the collection reference into a list of job triplets including an individual collection name, a computing platform name, and a processing dependency visit order value. (see column 3, lines 51-61 and see figure 7 and see column 8, lines 44-64).

As to claims 25, 32 and 39, Sundararajan, as modified, teaches wherein wherein performing the collection processing operation includes maintaining a proper execution ordering among collection symbolic job requests and lists of expanded job triplets (see figure 7 and see column 8, lines 44-64).

As to claims 26, 33 and 40, Sundararajan, as modified, teaches wherein wherein performing the collection processing operation includes expanding a first-level symbolic task name into a sequence of second-level task part statements (see column 7, lines 1-12).

As to claims 27, 34 and 41, Sundararajan, as modified, teaches wherein wherein performing the collection processing operation includes dynamically calculating a set of detailed executable commands (see column 4, lines 22-28).

As to claims 28, 35 and 42, Sundararajan, as modified, teaches wherein wherein performing the collection processing operation includes executing platform-dependent computing commands (see column 5, lines 14-19).

As to claim 29, Sundararajan teaches a system for performing symbolic task operations on collections (see Abstract), including:

For the remaining steps of this claim applicant(s) is/are directed to the remarks and discussions made in claim 22 above.

As to claim 36, Sundararajan teaches a computer program product for performing a symbolic task operation on a collection (see Abstract), the computer program product being embodied in a computer readable medium and comprising computer instructions for:

For the remaining steps of this claim applicant(s) is/are directed to the remarks and discussions made in claim 22 above.

### ***Response to Arguments***

8. Applicant's arguments filed on 13 October 2008 with respect to the rejected claims in view of the cited references have been fully considered but are not deemed persuasive.

Applicant argues that the "job" of Sundararajan "is limited to compiling" and thus cannot anticipate or render obvious the claimed invention, which Applicant alleges "execute **any** set of commands [...], not limited to compilation" (emphasis Applicant's). The Examiner respectfully disagrees.

During patent prosecution, the Examiner must determine the scope of the invention being claimed. This process is frequently compared to a surveyor marking off the boundaries of a piece of physical property. When an Examiner finds art that falls within the boundaries of a set of claims, a prior art rejection is appropriate. In this case,



Applicant claims a tool that executes any type of process. Accordingly, any particular process will fall within the scope of the claimed invention. A tool that compiles applications anticipates a tool that executes any arbitrary process, because compilation is one of a kind of what are known generally as "processes". Similarly, "Microsoft Windows XP" would anticipate "any operating system" and "telephone" would anticipate "any communications device". Applicant is encouraged to amend the claims to claim either a particular type of process or to claim the particular behavior that makes the disclosed invention especially suited to the task of executing arbitrary processes. Finally, it is noted that the instant specification specifically describes applying the tool to compilation tasks (e.g. paragraph 3 of page 49, below "Platform Expansion").

### ***Conclusion***

9. Any inquiry concerning this communication or earlier communications should be directed to the examiner, Mark A. Radtke. The examiner's telephone number is (571) 272-7163, and the examiner can normally be reached between 9 AM and 5 PM, Monday through Friday.

If attempts to contact the examiner are unsuccessful, the examiner's supervisor, Christian Chace, can be reached at (571) 272-4190.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to Customer Service at (800) 786-9199.

Art Unit: 2165

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/Christian P. Chace/  
Supervisory Patent Examiner, Art Unit 2165